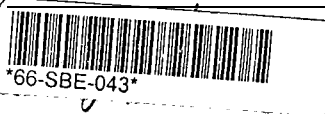


- ① RESIDENCY OF S.  
② Liability of Exec



BEFORE THE STATE BOARD OF EQUALIZATION  
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of )  
RUBY LOYAL, TRANSFEREE OF THE )  
ESTATE OF HELEN HOPEWELL, DECEASED )

Appearances:

For Appellant: A. William Olson, Jr.  
Attorney at Law

For Respondent: Wilbur F. Lavelle  
Associate Tax Counsel

O P I N I O N

This appeal is made pursuant to section 18594 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protests of Ruby Loyal, transferee of the Estate of Helen Hopewell, Deceased, against proposed assessments of additional personal income tax in the amounts of \$1,882.87, \$1,015.46, \$421.70, \$414.18, \$320.42, \$363.29, \$234.26, \$133.54. and \$69.45 for the years 1943 through 1951, respectively.

The questions presented by this appeal are (1) whether Helen Hopewell was a resident of California for personal income tax purposes during the years 1943 to 1951, inclusive, and if so, (2) whether appellant Ruby Loyal, as a transferee of Helen Hopewell's estate, must pay the income taxes which should have been paid by Helen Hopewell.

Helen Hopewell came to California from Massachusetts in December 1942 to spend the winter with her daughter, Ruby Loyal. Mrs. Hopewell, who was then 82 years old, decided to remain in California during 1943 because of wartime travel restrictions. In that year her health deteriorated and she

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was hospitalized for a month., In late 1943 and early 1944 she resided in the Huntington Hotel in Pasadena. She then moved to an apartment in Santa Barbara County which she occupied until November 1948. At that time she entered Las Encinas Sanitarium in Pasadena where she remained until her death in 1951. She did not file any California income tax returns.

While in California, Mrs. Hopewell retained a number of connections with Massachusetts. She held a life estate in the family home in Massachusetts and her securities, her jewelry and her checking account were in that state. She cast absentee ballots in Massachusetts in general elections held in 1944 and 1948, filed federal income tax returns with the District Director in Boston, Massachusetts, and also filed Massachusetts state income tax returns.

In December 1948 Ruby Loyal was appointed conservator of her mother's estate by a Massachusetts probate court and continued to act in that capacity until her mother's death in 1951. Mrs. Loyal was then appointed co-executrix of her mother's will by the Massachusetts court,

The inheritance and gift tax division of the California State Controller's office claimed that Mrs. Hopewell was a resident of California and filed a petition in a California superior court to recover inheritance taxes from her estate. The Massachusetts Tax Commission also sought inheritance taxes. In 1954 the California State Controller, the Massachusetts Tax Commission and the executors of Mrs. Hopewell's estate agreed that California inheritance taxes should be paid in an amount equal to half of the amount that would have been payable if Mrs. Hopewell had been a California resident.

Mrs. Loyal was the primary beneficiary of Mrs. Hopewell's estate, the bulk of which was intangible personal property. Upon distribution in 1956, Mrs. Loyal received, \$380,417.99.

In December 1961 respondent issued notices of proposed assessments of personal income tax against the estate of Mrs. Hopewell on the ground that she was a

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California resident for income tax purposes during the years 1943 to 1951, inclusive. The notices were mailed to Ruby Loyal as executrix-. The notices were protested and appealed to us but respondent. withdrew the assessments and the appeal was dismissed. Thereafter, in May 1963, respondent issued notices of proposed assessments against Ruby Loyal, as transferee of her mother's estate. These notices were protested and are the subject of the present appeal.

I

The first question is whether Helen Hopewell was a resident for personal income tax purposes during the years 1943 to 1951, inclusive. If so, she was obligated to pay income taxes to this state. (Pers. Inc. Tax Act, § 5, succeeded by Rev. & Tax. Code, § 17052 (now § 17041).)

For personal income tax purposes the term "resident" includes every person who is in California "for other than a temporary or transitory purpose." (Pers. Inc. Tax Act, § 2(k), succeeded by Rev. & Tax. Code, § 17013 (now § 17014).) A person who is in this state to improve his health and whose illness is of such a character as to require a relatively long or indefinite period to recuperate is a California resident even though he retains a domicile elsewhere. (Cal. Inc. Tax Regs., art. 2(k)-2, succeeded by Cal. Admin. Code, tit. 18, reg. 17013-17015(b) (now reg. 17014-17016(b)).) For personal income tax purposes, residence means bodily presence as a nontransient inhabitant rather than domicile. Voluntary, physical presence in the state is a factor of greater significance than the mental intent or outward formalities of ties to another state. (Whittle v. Franchise Tax Board, 231 Cal. App. 2d 278 [41 Cal. Rptr. 673].)

Eased on the above definitions, there is no doubt that Mrs. Hopewell's uninterrupted presence in California for the last eight years of her life made her a resident for personal income tax purposes.

II

The next question is whether appellant Ruby Loyal, as a transferee of Mrs. Hopewell's estate, must pay the

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personal income taxes which should have been paid by Mrs. Hopewell.

The federal income tax law has for many years permitted the assessment and collection of "the liability, at law or in equity, or a transferee of property," including a "donee, heir, legatee, devisee and distributee." This provision is now contained in section 6901 of the Internal Revenue Code of 1954. The liability referred to is that which exists under state laws. (Commissioner v. Stern, 357 U. S. 39 [2 L. Ed. 2d 1126].) Such liability has been found under a constructive trust fund doctrine. (Henry A. Kuckenberg, 35 T. C. 473,) Recovery has been allowed against distributees of estates, (United States v. Floersch, 276 F.2d 714, cert. denied, 364 U.S. 816 [5 L. Ed. 2d 47].)

Respondent relies upon section 18621 of the California Revenue and Taxation Code as authority equivalent with the federal law permitting assessments against transferees. Section 18621 provides that::

The taxes imposed by this part upon any taxpayer for which any person other than the taxpayer is liable may be assessed against such person in the manner provided for the . . . assessment of deficiencies....

Appellant argues that section 18621 applies only to persons whose liability for another's taxes is specified in the personal income tax statutes. For example, says appellant, the provision would apply to the liability of a fiduciary for the taxes of an estate, a liability imposed on the fiduciary by section 19265 of the Revenue and Taxation Code; The argument rests on the fact that section 18621 differs from the federal statute in that it does not expressly refer to transferees, donees, heirs, legatees, devisees and distributees who are liable either in law or in equity. Appellant also points out that section 25701a of the Revenue and Taxation Code, a part of the Bank and Corporation Tax Law, expressly permits the assessment of the liability "at law or in equity" of a "transferee."

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Although section 18621 is less detailed than the federal statute and the comparable section of the Bank and Corporation Tax Law, its terms are sufficiently broad to permit its application in the same manner as the federal statute. If the Legislature had intended to limit the scope of the section it could easily have done so by inserting restrictive language. The section, in our opinion, must be interpreted as broadly as it is written.

The trust fund doctrine, which has been invoked by the federal authorities to recover taxes from a transferee, applies in California. Section 2224 of the Civil Code provides that "One who gains a thing by fraud, accident, mistake ... is, unless he has some other and better right thereto, an involuntary trustee of the thing gained, for the benefit of the person who would otherwise have had it," Pursuant to this statute, the California Supreme Court has held that a mistake by a retailer which caused an erroneous computation of sales tax reimbursement gave rise to an involuntary trust for the benefit of his customers. (Decorative Carpets, Inc. v. State Board of Equalization, 58 Cal. 2d 252 [23 Cal. Kptr. 589, 373 P.2d 637].) The court has also recognized that a constructive trust may be imposed on assets distributed under a decree of another state where the decree is based on a mistake. (Smith v. Wood, 217 Cal. 541 [20 P.2d 48].)

To the extent of the income taxes owed to California, appellant received property from the estate of Mrs. Hopewell by mistake. It would appear, therefore, that she is liable for the taxes as an involuntary trustee.

Appellant contends, however, that respondent has no right to the taxes because it failed to file a timely claim in the probate proceedings in Massachusetts. Appellant points out that: an agency of this state, the Controller's office, knew of those proceedings.

The decree of distribution by the Massachusetts probate court cannot deprive respondent of its claim in the absence of proper notice and opportunity to be heard. (New York v. New York, N. H. & H. R. Co., 344 U.S. 293 [97 L. Ed. 333]; Mullane v. Central Hanover B. & T. Co., 339 U.S. 306 [94 L. Ed. 865]; Schroeder v. New York, 371 U.S. 208 [9 L. Ed.

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2d 255].) The gist of the above cited cases is that the moving party in proceedings designed to settle claims must give specific notice to potential claimants who are known or reasonably should be known. Constructive notice is not sufficient.

The executors of Mrs. Hopewell's estate, including appellant, knew or reasonably should have known that respondent was a potential claimant. They knew that Mrs. Hopewell had lived in California for the last eight years of her life. The question of her residence was serious enough in their minds to warrant compromising claims for California inheritance taxes. They, and particularly appellant, undoubtedly knew that California imposed income taxes upon residents.

The executors were therefore obliged to specifically notify respondent of the probate proceedings as a prerequisite to barring respondent's claim. They could not rely on constructive notice or notice to another state agency not concerned with administering the Personal Income Tax Law. Since proper notice was not given, the decree of the Massachusetts probate court did not bar respondent's claim.

We conclude that appellant is liable for the taxes in question as an involuntary trustee and that the taxes were properly assessed against her under section 18521 of the Revenue and Taxation Code,

O R D E R

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 18595 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protests of Ruby Loyal,

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transferee of the Estate of Helen Hopewell, Deceased, against  
proposed assessments of additional personal income tax in  
the amounts of \$1,882.87, \$1,015.46, \$421.70, \$414.18,  
\$320.42, \$363.29, \$234.26, \$133.54 and \$69.45 for the years  
1943 through 1951, respectively, be and the same is hereby  
sustained.

Done at Sacramento, California, this 1st day  
of August, 1966, by the State Board of Equalization.

Geoffrey H. Kelly, Chairman  
Alan Brampton, Member  
John W. Lynch, Member  
Paul R. Deike, Member  
Richard K. Kohn, Member

ATTEST:

W. F. Kohn, Secretary